

## UNITED STATES DISTRICT COURT

for the

Northern District of California

**FILED**

Jul 24 2020

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

United States of America

v.

Kelvin Michael Beshears

Case No. 4:20-mj-71008-MAG

*Defendant(s)***CRIMINAL COMPLAINT**

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of April 23, 2020 in the county of Contra Costa in the  
Northern District of California, the defendant(s) violated:*Code Section*

18 U.S.C. § 922(g)(1)

*Offense Description*

Felon in Possession of Firearm

Maximum penalties:

10 years prison  
\$250,000 fine  
3 years supervised release  
\$100 special assessment  
Forfeiture

This criminal complaint is based on these facts:

See attached affidavit of FBI Special Agent Matthew Ernst.

☒ Continued on the attached sheet.Approved as to form /s/ Noah Stern  
AUSA Noah Stern/s/ Matthew Ernst*Complainant's signature*Matthew Ernst, FBI Special Agent*Printed name and title*

Sworn to before me by telephone.

Date: 07/24/2020City and state: Oakland, California*Judge's signature*Hon. Donna M. Ryu, U.S. Magistrate Judge*Printed name and title*

**AFFIDAVIT IN SUPPORT OF APPLICATION FOR COMPLAINT**

I, Matthew Ernst, Special Agent, Federal Bureau of Investigation ("FBI"), being duly sworn state:

**INTRODUCTION**

1. I make this affidavit in support of an application under Rule 4 of the Federal Rules of Criminal Procedure for a criminal complaint and arrest warrant authorizing the arrest of Kelvin Michael Beshears ("BESHEARS") for being a felon in possession of a firearm in violation of Title 18, United States Code, Section 922(g)(1) (hereafter, the "Target Offense").

**SOURCES OF INFORMATION**

2. This affidavit is submitted for the limited purpose of securing a criminal complaint and arrest warrant. I have not included every fact known to me concerning this investigation. Instead, I have set forth only the facts necessary to establish probable cause that violations of the federal law identified above have occurred.

3. I have based my statements in this affidavit on my training and experience, personal knowledge of the facts and circumstances obtained through my participation in this investigation, information provided by other agents and law enforcement officers, including officers from the Antioch Police Department ("APD"), information provided by reports prepared by other agents and law enforcement officers, and information provided by records and databases, including regarding BESHEARS's criminal history. Where I refer to conversations and events, I often refer to them in substance and in relevant part rather than in their entirety or verbatim, unless otherwise noted. This affidavit also reflects my current understanding of facts relating to this investigation, but my understanding may change in the future as the investigation proceeds.

### **AFFIANT BACKGROUND**

4. I am a Special Agent (SA) of the Federal Bureau of Investigation (FBI) and have been so employed since March of 2004. During that time I have investigated a variety of federal crimes. Following Hurricane Katrina I investigated shootings and homicides in the City of New Orleans. I have attended training regarding the investigation of violent crimes and homicides through the FBI Oakland Homicide Task Force. Furthermore, I was an instructor at the FBI Academy for two years, where I instructed new agents and other law enforcement officers in the use of tactics and arrest techniques. While working as a FBI SA, I have been a member of the International Homicide Investigators Association and the California Robbery Investigators Association. Prior to working for the FBI, I was a police officer for the City of Antioch for over five years, to include time working as a detective investigating violent crime. In addition to the training and experience discussed above, I have also spoken to and worked with more experienced federal and state agents and officers throughout my career.

5. Currently, I am assigned to the FBI Safe Streets Gang Task Force in Contra Costa County, San Francisco Field Office, where my responsibilities include the investigation of federal firearms and narcotics violations. In this position, I have investigated and participated in the charging of dozens of federal cases involving violations of Title 18 U.S.C., Section 922(g)(1) (Felony in Possession of a Firearm or Ammunition), as well as other federal offenses.

### **APPLICABLE STATUTES**

6. Title 18, United States Code, Section 922(g)(1) provides: "It shall be unlawful for any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition

which has been shipped or transported in interstate or foreign commerce.”

7. The elements of the Target Offense are as follows: (1) the defendant knowingly possessed a firearm; (2) that firearm had been shipped or transported from one state to another, or between a foreign nation and the United States; (3) at the time the defendant possessed the firearm, the defendant had been convicted of a crime punishable by imprisonment for a term exceeding one year; and (4) at the time the defendant possessed the firearm, the defendant knew that he had been convicted of a crime punishable by imprisonment for a term exceeding one year.

### **FACTS SUPPORTING PROBABLE CAUSE**

#### **A. BESHEARS’ Criminal History**

8. I reviewed a criminal history report for BESHEARS that indicates he was arrested for Second Degree Robbery, in violation of California Penal Code § 212.5(c), on August 10, 2003. According to the report, BESHEARS was ultimately convicted of Grand Theft from a Person, a felony in violation of California Penal Code § 487(c), and was sentenced to 365 days jail and three years probation on November 3, 2003. According to the criminal history report, BESHEARS was also sentenced on that date to a concurrent six-month sentence for a separate misdemeanor conviction for Petty Theft, in violation of California P.C. §§ 484, 488. The report indicates that conviction stemmed from an arrest on July 19, 2003 for Battery: Spouse/Ex Spouse/Date/Etc, in violation of California Penal Code § 243(e)(1) and Petty Theft: Convert Real Property, in violation of California Penal Code § 487C.

9. According to the criminal history report, BESHEARS was arrested on June 16, 2006 for Possessing/Purchasing for Sale a Narcotic or Controlled Substance, in violation of California Health & Safety Code § 11351, and Obstructing a Public Officer, in violation of

California Penal Code § 148(a)(1). The report indicates that BESHEARS probation was revoked in lieu of filing. The report, however, also shows that BESHEARS was ultimately convicted of the felony offense of Possession of a Narcotic or Controlled Substance in connection with the arrest, in violation of California Health & Safety Code § 11350(a), and was sentenced to 270 days jail and 2 years probation on March 13, 2007.

10. The criminal history report indicates that on August 2, 2007, BESHEARS was arrested for Assault with a Deadly Weapon Other than a Firearm: Great Bodily Injury Likely, in violation of California Penal Code § 245(a)(1), and Possession of a Narcotic or Controlled Substance, in violation of California Health & Safety Code § 11350(a). The report indicates BESHEARS was arrested on a bench warrant related to these charges on June 20, 2008. According to the report, BESHEARS was ultimately convicted of felony Evading a Peace Officer: Disregard Safety, in violation of California Vehicle Code §28002(a), and sentenced to 365 days jail and 3 years probation on September 26, 2008.

11. I also reviewed court documents showing that, in 2013, BESHEARS was convicted of Felon in Possession of Firearm and Ammunition in violation of 18 U.S.C. § 922(g)(1) in the Northern District of California, for offense conduct occurring on December 26, 2011. BESHEARS was sentenced to 45 months in federal prison

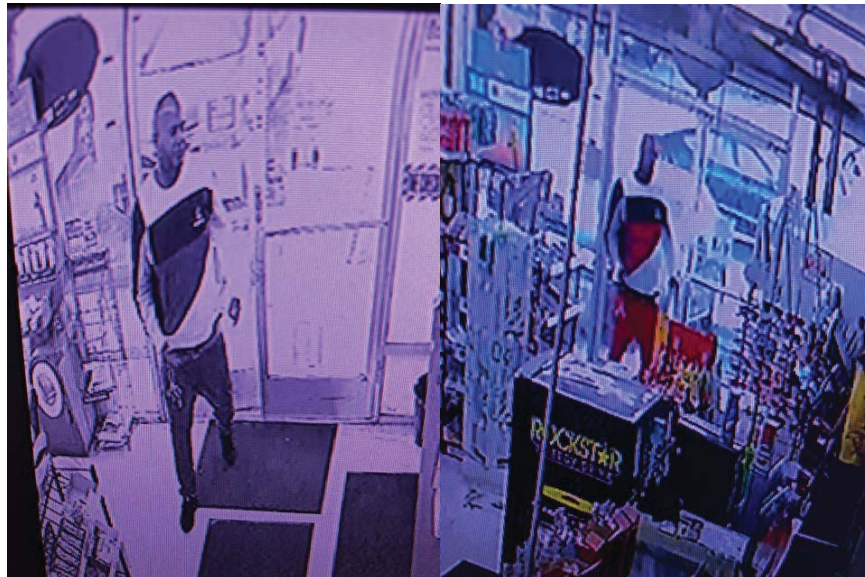
**B. BESHEARS Shoots Victim at Bonfare Market in Antioch on April 21, 2020**

12. On or about April 21, 2020, APD officers responded to the Bonfare Market in Antioch, California after a report of a shooting. Upon arrival, officers located a victim, Victim 1, lying on the ground in front of the store who had been shot once in his upper thigh.

13. Officers interviewed Victim 1, who told them that he went to the Bonfare Market

to buy some alcohol.<sup>1</sup> Victim 1 told officers that he had walked to the south east corner of the parking lot, where he urinated against a donation bin. A man, later identified as BESHEARS, confronted Victim 1 and the two argued. During the argument, BESHEARS pulled out a pistol and shot Victim 1 once in the thigh. BESHEARS then drove off in a black Mercedes.

14. An APD officer viewed surveillance footage from Bonfare Market and saw BESHEARS, who he identified from prior contacts, entering the market around 45 minutes before the shooting. BESHEARS was wearing distinctive red pants and a red, white and black jacket or sweater. Officers also viewed surveillance footage from a business in the same strip mall. The footage partially shows the confrontation between Victim 1 and the shooter, who appears to be BESHEARS based on the distinctive clothing, and who drives off in a dark-grey Mercedes after the confrontation. Screen captures from the surveillance footage is copied below:



---

<sup>1</sup> Victim 1 appeared to be intoxicated and had a half-consumed bottle of alcohol in his pocket.





15. The next day, Victim 1 reviewed a photo lineup and identified BESHEARS as the shooter. APD also located the dark-grey Mercedes, which was registered to BESHEARS, in the parking lot of an apartment complex on Sycamore Drive. An APD detective spoke with an employee of the apartment complex who confirmed that BESHEARS lived there. The detective also viewed surveillance footage from the complex showing BESHEARS arrive at the apartment complex in the gray Mercedes around five minutes after the shooting and walk to his apartment.

16. The same day, a state magistrate issued a search warrant authorizing the search of BESHEARS's residence and vehicles, including a tan Mercedes that the employee of the apartment complex had told APD BESHEARS regularly drove. A warrant was also issued for BESHEARS arrest on probable cause he had violated California Penal Code Section 245(a)(2) (Assault on a Person with a Firearm).

17. On or about April 23, 2020, APD located the tan Mercedes, conducted a traffic stop, and arrested BESHEARS. The vehicle was then towed to APD.

18. APD detectives searched the tan Mercedes at the station. They found a black

Beretta Px4 Storm .40 caliber pistol, bearing serial number PZ33959 (referred to hereafter as the “Beretta Px4”), hidden behind the stereo/radio unit of the vehicle. The pistol was loaded with eight .40 caliber cartridges in the magazine and one in the chamber. Photos of the recovered firearm are copied below:



19. The detectives also found a pair of red pants and a red, white and black sweater in the vehicle. Photos of how the red pants were found and of the red, white and black sweater are copied below:





20. On or about April 27, 2020, APD submitted the Beretta Px4 and the .40 caliber shell casing recovered from the Bonfare Market parking lot to the Contra Costa County Crime Lab. On or about May 14, 2020, the Crime Lab found that the recovered shell casing had been fired from the Beretta Px4.

21. On or about May 26, 2020, I contacted Beretta USA Corp. and provided a

representative with information about the Beretta Px4. According to the representative, this firearm was manufactured in Italy and imported into the United States.

**REQUEST TO SEAL AFFIDAVIT, CRIMINAL COMPLAINT, AND ARREST  
WARRANT**

22. Based on my training and experience, disclosure of the existence of this affidavit, the complaint, the arrest warrant, and related documents may cause BESHEARS or other co-conspirators unknown at this time to destroy evidence or conceal on-going criminal activity, jeopardizing the progress of the ongoing investigation. I therefore request that the Court seal this affidavit, the complaint, the arrest warrant, and related documents

**CONCLUSION**

23. On the basis of my participation in this investigation and the information summarized above there is probable cause to believe that on or about April 23, 2020, in the Northern District of California, BESHEARS committed the crime of being a felon in possession of a firearm, namely a Beretta Px4 Storm .40 caliber pistol, bearing serial number PZ33959, in violation of 18 U.S.C. § 922(g)(1).

\_\_\_\_\_/s/ Matthew Ernst\_\_\_\_\_  
Matthew Ernst  
Special Agent  
Federal Bureau of Investigation

Sworn to before me over the telephone and signed by me pursuant to Fed.R.Crim.P. 4.1 and 4(d) on this 24 day of July 2020.



\_\_\_\_\_  
HON. DONNA M. RYU  
United States Magistrate Judge